

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 6, 2005

IN RE:

TENNESSEE COALITION OF RURAL INCUMBENT  
TELEPHONE COMPANIES AND COOPERATIVES  
REQUEST FOR SUSPENSION OF WIRELINE TO  
WIRELESS NUMBER PORTABILITY OBLIGATIONS  
PURSUANT TO SECTION 251(F)(2) OF THE  
COMMUNICATIONS ACT OF 1934, AS AMENDED

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DOCKET NO.  
03-00633

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ORDER DENYING AMENDED PETITION AND ESTABLISHING DATES  
FOR IMPLEMENTATION OF LOCAL NUMBER PORTABILITY

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This matter came before Director Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on September 13, 2004, for consideration of the *Amended Petition for Suspension* filed by the Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives (the "Coalition") requesting suspension of wireline to wireless number portability obligations pursuant to 47 U.S.C. § 251(f)(2). After reviewing the entire record in this matter, the panel determined that the Amended Petition should be denied and established deadlines for implementation of local number portability as reflected in this Order.

## **BACKGROUND**

Section 251(b)(2) of the Telecommunications Act of 1996 (the “Act”)<sup>1</sup> sets forth the duties of Local Exchange Carriers (“LECs”) with regard to local number portability (“LNP”).<sup>2</sup> The Federal Communications Commission (“FCC”) released an Order in 1996 establishing requirements for LNP<sup>3</sup> and creating a phase-in schedule for LECs to implement LNP in the top 100 Metropolitan Statistical Areas (“MSAs”) as identified by the 1990 U.S. Census. The FCC determined that “[n]umber portability must be provided in these areas by all LECs to all telecommunications carriers, including commercial mobile radio services (CMRS) providers by December 31, 1998.”<sup>4</sup> The FCC also stated “this obligation requires LECs to provide number portability to other telecommunications carriers providing local exchange or exchange access service within the same MSA.”<sup>5</sup>

The FCC’s Order provides that “in markets outside of the 100 largest MSAs . . . number portability should be deployed within six months of a specific request from another telecommunications provider.”<sup>6</sup> Additionally, the FCC delegated to the Chief of the Common Carrier Bureau the authority to waive or stay any of the dates in the implementation schedule for a period not to exceed nine months, stating that “carriers are expected to meet the prescribed deadlines, and a carrier seeking relief must present extraordinary circumstances beyond its control” to be granted an extension.<sup>7</sup>

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<sup>1</sup> 47 U.S.C. § 251(b)(2)

<sup>2</sup> Number Portability and Service Provider Portability are defined as “the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another” 47 C.F.R. § 52.21(l), (q)

<sup>3</sup> *In the Matter of Telephone Number Portability*, FCC 96-286 (*First Report and Order and Notice of Further Notice of Proposed Rulemaking*) 11 F.C.R. 8352 (July 2, 1996) (“*First Report and Order*”)

<sup>4</sup> *Id.* at ¶ 3

<sup>5</sup> *Id.* at ¶ 77

<sup>6</sup> *Id.* at ¶ 82

<sup>7</sup> *Id.* at ¶ 85

In a subsequent Order, issued following reconsideration, the FCC concluded that a LEC need only provide number portability in the top 100 MSAs in switches where there has been a request from another carrier.<sup>8</sup> The FCC explained that it would not grant blanket exemptions from number portability requirements<sup>9</sup> but that an individual LEC receiving a request for portability could apply for an extension of time on the basis of extraordinary circumstances beyond its control. In the alternative, an individual LEC could petition the appropriate state commission, as established in Section 251(f)(2) of the Act, for a suspension or modification of the requirements of Section 251(b) which apply to all LECs.<sup>10</sup> The FCC's subsequent Order reaffirmed that CMRS providers, or wireless carriers, must deliver calls from their networks to ported numbers by December 31, 1998 and offer service provider portability throughout their networks serving in the top 100 MSAs by June 30, 1999.<sup>11</sup>

After granting several extensions of the date for implementation of LNP, the FCC released an order on July 26, 2002 scheduling wireless LNP to be implemented not later than November 24, 2003 in the top 100 MSAs for a carrier that receives a request.<sup>12</sup> Under the terms of this extension wireless carriers in the largest 100 MSAs that receive a request after November 24, 2003 must be capable of allowing end-users to port their telephone numbers within 30 to 180 days of the request.<sup>13</sup> Outside the largest 100 MSAs, the carriers must be able to provide number

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<sup>8</sup> See *In the Matter of Telephone Number Portability*, FCC 97-74 (First Memorandum Opinion and Order on Reconsideration) 12 F C C R 7236, ¶ 113 (March 11, 1997) ("First Memorandum Opinion and Order")

<sup>9</sup> *Id.* at ¶ 114

<sup>10</sup> *Id.* at ¶ 115

<sup>11</sup> *Id.* at ¶ 2

<sup>12</sup> *In the Matter of Telephone Number Portability*, FCC 02-215 (Memorandum Opinion and Order) 17 F C C R 14,972, ¶ 31 (July 26, 2002)

<sup>13</sup> *Id.*, 47 C F R § 52.31(a)(1)(iv)(A)-(D) provides that LNP must be available in equipped remote switches within 30 days, in switches where software only is needed, within 60 days, in switches requiring hardware changes, within 180 days, and in areas where the switch must be replaced, within 180 days

portability within six months after receiving a request or within six months after November 24, 2003, whichever is later.<sup>14</sup>

On November 10, 2003, just prior to the mandated November 24, 2003 wireless LNP implementation date, the FCC released its response<sup>15</sup> to a petition for declaratory ruling filed on January 23, 2003, by the Cellular Telecommunications and Internet Association (“CTIA”). The CTIA petition had requested the FCC to provide guidance to the industry on local number portability issues relating to porting between wireline and wireless carriers. In its response, commonly referred to as the *Intermodal Portability Order*, the FCC clarified that nothing in its rules limited porting between wireline and wireless carriers or required wireless carriers to have a physical point of interconnection or numbering resources in the rate center where the number to be ported is assigned.<sup>16</sup> The FCC found that porting from a wireline carrier to a wireless carrier is required as of November 24, 2003 where the requesting wireless carrier’s coverage or service area overlaps the geographic location where the wireline carrier’s number is provisioned (rate center), so long as the porting-in carrier maintains the original rate center designation following the port.<sup>17</sup> The FCC also found that wireline carriers may not require wireless carriers to enter into interconnection agreements solely for number portability.<sup>18</sup>

After release of the FCC’s *Intermodal Portability Order*, several LECs petitioned the FCC requesting suspension or a waiver of the November 24, 2003 requirement to provide intermodal LNP. On January 16, 2004, the FCC issued an Order<sup>19</sup> (the “*Two Percent Order*”) granting:

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<sup>14</sup> *Memorandum Opinion and Order*, FCC 02-215, ¶ 31

<sup>15</sup> *In the Matter of Telephone Number Portability*, FCC 03-284 (*Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*) 2003 WL 22658207 (November 10, 2003) (“*Intermodal Portability Order*”)

<sup>16</sup> *Id.* at ¶ 1

<sup>17</sup> *Id.* at ¶ 22

<sup>18</sup> *Id.* at ¶ 24

<sup>19</sup> *In the Matter of Telephone Number Portability*, FCC 04-12 (*Order*, CC Docket 95-116)

Two Percent Carriers<sup>20</sup> that meet the conditions described in this order a waiver until May 24, 2004, to comply with the wireline-to-wireless porting requirement. The waiver applies to all Two Percent Carriers operating within the top 100 MSAs that had not received a request for local number porting from either a wireline carrier prior to May 24, 2003, or a wireless carrier that has a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned . . . .<sup>21</sup>

In a February 3, 2004 Public Notice, addressing a *Petition for Delegated Authority to Implement Wireless Number Portability*, the FCC again clarified the number portability requirement for carriers outside the top 100 MSA stating, "Carriers are required to support number portability in areas outside the largest 100 MSAs within six months after receiving a request for number portability or by May 24, 2004, whichever is later."<sup>22</sup>

## **TRAVEL OF THE CASE**

### **The Coalition's Original Petition**

On December 11, 2003, subsequent to the release of the *Intermodal Portability Order*, the Coalition filed its *Petition for Suspension* ("*Petition*") with the Authority, requesting suspension of the FCC's order to implement wireline to wireless portability obligations. In the *Petition*, the Coalition, all of the members of which it claims qualify as two percent carriers, asserted that it had satisfied the requirements of Section 251(f)(2) of the Act and that granting a suspension would be "consistent with the public interest, convenience and necessity."<sup>23</sup> The Coalition also asserted that the provision of number portability in the areas served by its members would have significant adverse economic impact on telecommunications users, would be economically burdensome and would not be technically feasible. The Coalition argued that

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<sup>20</sup> Two Percent Carriers are defined as carriers that are servicing less than two percent of the nation's access lines in the aggregate. See 47 U.S.C. § 251(f)(2)

<sup>21</sup> *In the Matter of Telephone Number Portability*, FCC 04-12 (Order, CC Docket 95-116), ¶ 1 (footnote 20 added)

<sup>22</sup> DA 04-269, CC Docket 95-116

<sup>23</sup> *Petition for Suspension*, p. 2 (December 11, 2003)

the FCC's rules establishing intermodal portability deadlines are not consistent with the operations and characteristics of its members and that it is technically infeasible for small and rural carriers to comply with the deadlines. According to the Coalition, the *Intermodal Portability Order* does not contemplate the operational factual realities and network characteristics of its members and other smaller carriers throughout the nation.<sup>24</sup>

The Coalition also asserted that its members have not been subjected to requests for number portability from competing local exchange carriers ("CLECs") and have not generally deployed the hardware and software in their switches to support number portability in their operations either inside or outside of the top 100 MSAs.<sup>25</sup> According to the Coalition, important compensation issues associated with porting outside the rate center need to be resolved to accomplish intermodal number porting and call routing outside the rate center of the ported number. The Coalition stated that there exist unresolved questions regarding the financial responsibility for significant costs that will result from implementation of the porting, routing and rating of calls to ported numbers.<sup>26</sup>

The Authority issued a data request to the Coalition on January 14, 2004, requesting additional information to determine the ability of each member company to provide LNP.<sup>27</sup> On January 30, 2004, the Consumer Advocate and Protection Division of the Office of the Attorney General ("Consumer Advocate") filed a *Complaint and Petition to Intervene* based upon the assertion that Tennessee customers may be adversely impacted by an indefinite suspension of the

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<sup>24</sup> *Id* at 5

<sup>25</sup> *Id* at 5-6

<sup>26</sup> *Id* at 9

<sup>27</sup> According to the member company responses, not all companies have received a bona fide request for portability. Because the date of a bona fide request establishes the date for implementation, there can be no deadline date prior to receipt of such a request. Thus, from the original *Petition* and the responses to the data request, it appeared that not all of the members of the Coalition had received a bona fide request, which would establish an implementation date or warrant a request for suspension.

FCC's LNP requirements. On February 12, 2004, Nextel Communications, Inc. ("Nextel") filed a letter in opposition to the Coalition's *Petition* stating that the Coalition's request for suspension was deficient and should be denied. Nextel asserted, in part, that the Coalition was attempting to delay wireline network upgrades necessary for LNP by raising "unsubstantiated claims of 'uncertainty' or 'technical infeasibility.'"<sup>28</sup>

On February 23, 2004, AT&T Wireless Services, Inc. ("AWS") filed comments opposing the Coalition's *Petition*. AWS objected to the Coalition's request for an open-ended suspension<sup>29</sup> and argued that the *Petition* failed to include company-specific arguments in violation of the FCC's Interconnection Order, which requires state commissions to determine exemptions in Section 251(f) "on a case-by-case basis."<sup>30</sup> Further, AWS argued that the *Petition* should be denied because the Coalition had failed to comply with the criteria set forth in § 251(f)(2).<sup>31</sup>

The voting panel considered the Coalition's *Petition* at an Authority Conference held on February 23, 2004. Based upon implementation progress differences of the Coalition members and the FCC's requirement that each company set forth specific reasons warranting suspension, the Authority determined that this matter could not be deliberated based on the limited information provided in the original *Petition*.

The Authority ordered the Coalition to amend its *Petition* to include specific relief for each company. The Consumer Advocate was directed to refile any opposition or intervention based upon the Coalition's amended filing. At the February 23, 2004 Conference, the voting

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<sup>28</sup> Letter from Drinker, Biddle & Reath, LLP to TRA Chairman Deborah Taylor Tate, pp 2-3 (February 12, 2004)

<sup>29</sup> Comments of AT&T Wireless Services, Inc., p 2 (February 23, 2004)

<sup>30</sup> *Id.* at 3, citing *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996, Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Report and Order*, CC Docket Nos 96-98 and 95-185, FCC 96-325 (August 8, 1996) (*Interconnection Order*), ¶ 1262

<sup>31</sup> *Id.* at 6

panel also voted unanimously to appoint the Authority's General Counsel or his designee to serve as Hearing Officer in this matter to work with the parties in the filing of an amended petition, to hear preliminary matters prior to the Hearing, to rule on any petition(s) for intervention and to prepare the docket for a Hearing.<sup>32</sup> Thereafter, the Hearing Officer conducted a telephonic status conference with the parties during which the parties agreed to a schedule by which the Coalition would file an amended petition and the Consumer Advocate would file a response.

### **The Coalition's Amended Petition**

On March 24, 2004, the Coalition filed its *Amended Petition for Suspension* ("Amended Petition") of the FCC's intermodal number porting deadline of May 24, 2004. In its *Amended Petition*, the Coalition states that implementing LNP will have a significant adverse economic impact on its members' users, that additional time is needed to complete implementing LNP capability, that intermodal number portability is not technically feasible, and that a suspension of the LNP May 24, 2004 deadline is warranted. The Coalition also states that the requested suspension will be consistent with the public interest, convenience and necessity.<sup>33</sup>

The Coalition requests that the LNP requirements be suspended pending this proceeding and that a suspension be granted until the later of: (1) the dates for each member listed on Attachment A of its *Amended Petition*; (2) six months after the date by which the applicable FCC Orders (issued on November 10, 2003, and January 16, 2004) are no longer subject to appeal; or (3) six months after the date by which the TRA has provided direction to the Coalition members

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<sup>32</sup> See *Order Requiring the Tennessee Coalition to Amend Its Petition and Appointing Hearing Officer* (March 18, 2004)

<sup>33</sup> *Amended Petition for Suspension*, p. 2 (March 24, 2004)

on the rating and routing issues raised in its *Amended Petition* and in the CMRS Arbitration Docket No. 03-00585 pending before the TRA.<sup>34</sup>

According to the Coalition, the dates, included in Attachment A to its *Amended Petition*, indicate that most of its members need additional time to complete the tasks that are required to become LNP capable. Even with these projected dates, the Coalition maintains that LNP is still not feasible due to the lack of interconnection arrangements required to ensure that intermodal porting and exchange of end-user traffic can be effective. In addition, the Coalition states that unlike larger LECs, its members in general have not been required under the FCC's existing rules to deploy number porting capability and that the Coalition members specifically have not generally deployed the hardware and software in their switches to support number portability. The Coalition also states that there is "uncertainty, confusion and continuing need for clarification with respect to [its] intermodal porting obligations" that has not been resolved by the FCC and that a "suspension is warranted to protect the public from the inevitable confusion . . . where a number can be ported technically, but no routing arrangements have been made by the requesting carrier to ensure that calls to the ported number can be completed on a non-toll basis."<sup>35</sup>

The Coalition states that the economic burden of deployment of LNP in rural markets served by its members is significant. The Coalition has provided each member's estimated or actual expenditures required for the implementation of LNP. Specifically, such expenditures include switch upgrades, software, contracts, administration costs including hiring additional personnel, testing, and training and startup expenses.

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<sup>34</sup> *Id.* at 1-2

<sup>35</sup> *Id.* at 8

The Coalition states that the provision of wireline to wireless number portability is not technically feasible and that the member companies cannot fully comply with LNP requirements with respect to routing and rating of calls to ported numbers. The Coalition argues that interconnection arrangements between the member companies and wireless service providers are necessary for calls to a ported number to be properly rated, or “in the same fashion as they were prior to the port,”<sup>36</sup> because “the interconnection obligations and technical capabilities of the [Coalition members] are limited to their local exchange networks that are geographically limited by the bounds of their incumbent service territory.”<sup>37</sup>

### **Petitions for Intervention and Comments**

On April 1, 2004, the Consumer Advocate filed a *Second Complaint and Petition to Intervene*, asserting that the Coalition had not set forth sufficient evidence to support its requested suspension and that consumers may be adversely impacted by such an indefinite suspension. The Consumer Advocate stated in this filing that “[t]o the extent the [Coalition members] are able to demonstrate that the dates set forth in ‘Attachment A’ to the Amended Petition are accurate projections for LNP technical capacity, the Consumer Advocate does not object to suspension until these dates for each independent.”<sup>38</sup>

On April 15, 2004, Nextel filed its supplemental opposition to the Coalition’s *Amended Petition*, stating that the “absence of any evidence in the petition and the boiler-plate assertions about the costs of wireline to wireless LNP are plainly insufficient to warrant suspension.”<sup>39</sup> Nextel urged the Authority to dismiss the *Amended Petition* but did not seek intervention in this docket.

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<sup>36</sup> *Id.* at 16

<sup>37</sup> *Id.* at 20

<sup>38</sup> *Second Complaint and Petition to Intervene*, pp. 3-4 (April 1, 2004)

<sup>39</sup> Letter from Drinker, Biddle & Reath, LLP to Chairman Deborah Taylor Tate, p. 3 (April 15, 2004)

On April 16, 2004, Cellco Partnership d/b/a Verizon Wireless (“Verizon”) filed its *Opposition to Suspension Request and Petition for Leave to Intervene*. Verizon stated that it provides services in many of the counties in which the members of the Coalition operate, and that it has been required to allow customers to port their numbers out, to accept new customers with numbers ported in and that it is in compliance with number portability orders and rules.<sup>40</sup> Verizon states that it has built a fully operational porting center in Murfreesboro, Tennessee, and currently employs hundreds of Tennesseans at that facility, but if the Coalition’s requests for suspension of LNP implementation are granted, Verizon may have to adjust its operations.<sup>41</sup> Verizon further states that it has submitted bona fide requests to approximately 17 of the 20 members of the Coalition. In opposing the Coalition’s request for a suspension of LNP implementation, Verizon states that the Coalition has not demonstrated any reason why compliance with the FCC’s deadline would be inconsistent with the public interest. Verizon also states that the FCC has ruled that interconnection agreements for the purpose of LNP cannot be required. Verizon asserts that this matter may directly affect its operations in the State of Tennessee.<sup>42</sup>

On April 19, 2004, the Coalition filed *Petitioners’ Motion for Suspension Pending Proceeding and Motion to Set Procedural Schedule* (“*Petitioners’ Motion*”) which stated a suspension pending this proceeding will not prejudice consumers as there is “almost no demand for number portability at the present time.”<sup>43</sup> The Coalition submitted an Affidavit from Mr. Bruce Mottern of TDS Telecom (“TDS”), filed with the *Petitioners’ Motion*, in which Mr.

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<sup>40</sup> *Opposition to Suspension Request and Petition for Leave to Intervene of Verizon Wireless*, pp 1-2 (April 16, 2004)

<sup>41</sup> *Id* at 2

<sup>42</sup> *Id* at 4-5

<sup>43</sup> *Petitioners’ Motion for Suspension Pending Proceeding and Motion to Set Procedural Schedule*, p 1 (April 19, 2004)

Mottern attests that TDS has received three inquiries from consumers for number portability. The Coalition also pointed out that the Consumer Advocate stated at the February 23, 2004 Authority Conference it would not oppose an interim suspension pending resolution on the merits of the Coalition's request. On April 28, 2004, the Consumer Advocate filed *Consumer Advocate's Response to Motion to Suspend* stating that it "does indeed object to an extension beyond May 24, 2004."<sup>44</sup> Verizon also filed, on April 30, 2004, a response in opposition to the Coalition's request for an interim suspension.

#### **Hearing Officer's Order of May 7, 2004**

In an Order issued on May 7, 2004, the Hearing Officer found that the Coalition had amended its filing to comply with the directives of the Authority and that an evidentiary hearing would be necessary to determine the facts that may support the required elements of Section 251(f)(2). Upon reviewing the *Amended Petition* and its Attachment in light of the criteria set forth in Section 251(f)(2), the Hearing Officer concluded that the *Amended Petition* sufficiently stated a cause of action to proceed to an evidentiary determination of whether each member of the Coalition could satisfy the statutory requirements for a suspension under Section 251(f)(2). The Hearing Officer also concluded that the filing of the *Amended Petition* triggered the commencement date of the proceeding under Section 251(f)(2) such that the 180 day period for action by the Authority would begin on March 24, 2004.

Upon finding that the legal rights and interests of Tennessee consumers may be determined in this proceeding the Hearing Officer granted the Consumer Advocate's petition to intervene. The Hearing Officer also found that the legal rights, duties, privileges, immunities or other legal interests of Verizon might be determined in this proceeding and granted the petition for intervention filed by Verizon.

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<sup>44</sup> *Consumer Advocate's Response to Motion to Suspend*, p. 2 (April 28, 2004)

As a part of its *Amended Petition* and in its motion filed on April 19, 2004, the Coalition sought an interim or temporary suspension of the FCC's requirements pending a decision by the TRA on the Coalition's request for relief. The Hearing Officer concluded that such an interim suspension is contemplated in Section 251(f)(2), giving the TRA the authority to suspend the FCC's requirement while the TRA is considering the Coalition's *Amended Petition*.

The Hearing Officer granted an interim suspension for a period of sixty (60) days or until July 23, 2004 to proceed with a hearing on the merits of the *Amended Petition*. The Hearing Officer also established an expedited schedule for discovery and pre-filed testimony to prepare for and conduct a Hearing within the time period of the interim suspension. The procedural schedule proposed a hearing date soon after June 18, 2004. The Hearing Officer also ordered each member of the Coalition to file with the Authority, by May 19, 2004, statements and documentation in support of the implementation dates set forth in Attachment A of the Coalition's *Amended Petition*. The parties initiated discovery on May 17, 2004 pursuant to the expedited procedural schedule.

SprintCom, Inc. d/b/a Sprint PCS ("Sprint PCS") filed a petition to intervene in this docket on May 14, 2004. An order was entered on June 2, 2004 granting the intervention to Sprint PCS and partially amending the procedural schedule.

At an Authority Conference held on June 7, 2004, the panel assigned to this docket considered a request by the Coalition to reschedule the hearing date and, by a unanimous vote, directed the Hearing Officer to meet with the parties and determine a revised procedural schedule based either on an agreed-upon "paper" hearing or a new hearing date. The Hearing Officer met with counsel for the parties, at which time the parties discussed proceeding with a "paper" hearing as the means of presenting evidence and argument on the issues in this case. On June 9,

2004, the parties submitted a letter to the Hearing Officer advising that they had reached an agreement to present this matter to the Authority through a “paper” hearing. The parties also proposed a revised procedural schedule that would encompass the completion of pre-filed testimony and incorporate a date for the filing of briefs. The parties suggested July 26, 2004 as a date on which the Authority could render a decision based on the record of the case and the briefs of the parties.<sup>45</sup>

In an *Order Amending Procedural Schedule and Extending Interim Suspension through July 26, 2004*, the Hearing Officer found that the parties had complied with the instructions of the panel and determined that this matter would proceed to deliberation by the panel to determine issues of law and fact based on the evidentiary record reflected in the docket file. This evidentiary record would include the *Amended Petition* and supporting documentation, responses of the parties, discovery responses filed by the parties, pre-filed direct and rebuttal testimony and the parties’ briefs. The Order also amended the procedural schedule to incorporate the filing dates and proposed decision date agreed upon by the parties. Pursuant to the amended procedural schedule, the parties submitted pre-filed testimony on June 4 and June 7, 2004, with rebuttal testimony being filed on June 22, 2004. All parties filed briefs on the issues of law and fact on July 9, 2004.<sup>46</sup>

On July 26, 2004, the Hearing Officer entered an Order extending the interim suspension through August 31, 2004 to allow for the resolution of Verizon’s *Motion to Compel Responses to*

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<sup>45</sup> Because this suggested date was beyond the original interim suspension date of July 23, 2004 established in the *Order Granting Petitions for Intervention and Motion for Suspension Pending Proceeding and Establishing Expedited Procedural Schedule* (May 7, 2004), the parties agreed to and were granted an extension of the interim suspension to include the requested decision date

<sup>46</sup> After the filing of the *Amended Petition*, four members of the Coalition withdrew their requests for suspension. A Notice of Withdrawal filed on June 16, 2004 notified the Authority that United Telephone Company would no longer be a party in this docket. On July 26, 2004, the Coalition filed a Notice of Withdrawal removing CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc., and CenturyTel of Ooltewah-Collegedale, Inc. from the list of those members petitioning for relief in this docket.

*Discovery Requests*, the closing of the record and a decision by the Authority on the merits of the *Amended Petition*. In the *Order Granting Verizon Wireless' Motion to Compel, Requiring Additional Filings and Extending Interim Suspension through September 20, 2004*, the Hearing Officer required updated responses from each Coalition member to the outstanding discovery requests. The Order permitted the Intervenor to update their relative positions by providing comments or updated responses to the information filed by the Coalition. Because of the decision to obtain updated information pertaining to requests for LNP and the technical capabilities of members of the Coalition to implement LNP, the Hearing Officer determined that the interim suspension should be extended to allow additional time for filings and review of the updated record. For these reasons, the Hearing Officer ordered that the interim suspension be extended through September 20, 2004 to allow for a decision by the Authority on the merits of the *Amended Petition*. The Order specifically noted that the extension of the interim suspension would not exceed the 180 day time period within which the Authority must act on the *Amended Petition* pursuant to 47 U.S.C. § 251(f)(2).<sup>47</sup>

#### **FINDINGS AND CONCLUSIONS**

The panel assigned to this docket deliberated the merits of the *Amended Petition* at an Authority Conference held on September 13, 2004. The panel initially directed the Coalition to file company-specific data so that the record in this proceeding would contain the information necessary for the Authority to conduct a case-by-case determination as to whether the individual

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<sup>47</sup> See *Order Granting Verizon Wireless' Motion to Compel, Requiring Additional Filings and Extending Interim Suspension Through September 20, 2004* (August 13, 2004). In the Order of May 7, 2004, the Hearing Officer determined that the 180 day period for Authority action did not begin until the filing of the *Amended Petition* on March 24, 2004. As such, the 180 day time period would not expire until September 20, 2004.

members of the Coalition meet the burden of proof necessary to avail themselves of the relief provided for in Sections 251(f)(2) of the Act.<sup>48</sup>

In ruling on the *Amended Petition*, the panel made the following findings and conclusions, based on the record in this docket, including the responses to discovery and data requests, pre-filed testimony and the briefs of the parties.

The controlling language in Section 251(f)(2) directs state commissions to grant petitions for suspension or modification:

to the extent that, and for such duration as, the State commission determines that such suspension or modification – (A) is necessary (i) to avoid a significant adverse economic impact on users of telecommunications services generally; (ii) to avoid imposing a requirement that is unduly economically burdensome; or (iii) to avoid imposing a requirement that is technically infeasible; and (B) is consistent with the public interest, convenience, and necessity.

The panel found that the Coalition addressed the technical infeasibility standard in Section 251(f)(2)(A)(iii) as having two prongs: one prong addressing the back office software and hardware and other purely technical issues related to LNP and the second prong addressing the resolution and financial impact of transport issues.

The Coalition, through its witness Steven Watkins, asserted the position that without direct interconnection carrier and customer confusion will result and the routing and rating of calls will be affected.<sup>49</sup> Nevertheless, the panel concluded that this position is not sustainable in meeting the burden under Section 251(f)(2)(A)(iii). First, it cannot be concluded from this position that a provisioning intermodal LNP is technically infeasible. In fact, the Coalition acknowledged that LNP is technically feasible, apart from its position on rating and routing, by submitting a matrix that identified the time frames in which its members would be LNP

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<sup>48</sup> See *Order Requiring the Tennessee Coalition to Amend Its Petition and Appointing Hearing Officer* (March 18, 2004)

<sup>49</sup> Steven E. Watkins, Pre-Filed Testimony, pp 10-13 (June 4, 2004)

compliant. Second, the panel found that the rating and routing concerns of the Coalition were not identified in the FCC's *Intermodal Portability Order* as a basis for suspending the LNP requirement. Instead, the FCC acknowledged the existence of rating and routing issues and declined to alter the LNP deadline.<sup>50</sup> Third, the Coalition did not demonstrate in a quantifiable manner that routing costs would be unduly burdensome, rendering LNP technically infeasible. Further, the record demonstrates that routing demand presently exists under current interconnection requirements and that calls are being routed at this time to wireless carriers that do not have direct interconnection agreements with rural LECs. In conclusion, the record in this proceeding does not support the Coalition's position that routing would create a technical infeasibility.

The panel also found that there was insufficient evidence in the record to support a finding that an extension is consistent with the public interest. The Coalition did not submit data reflecting the financial impact of additional costs associated with the completion of wireless calls under an intermodal porting situation. Section 251 of the Act and the Authority's instructions to file company-specific data require more than the anecdotal and general policy statements contained in this record. The panel determined that, in the absence of data to support specific contentions, conclusions with respect to public interest and sound policy are, at best, speculative.

The panel also determined that the Coalition did not carry its burden to demonstrate that the users of telecommunications services would suffer significant adverse economic impact or that the LNP implementation requirement is unduly economically burdensome. To the contrary, the data revealed that intermodal LNP implementation would result in the assessment of a customer surcharge of between 4 cents (\$0.04) and 26 cents (\$0.26) a month per access line for five years. This range is extremely reasonable. There was no quantifiable showing

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<sup>50</sup> *Intermodal Portability Order*, FC 03-284, ¶¶ 39-40

demonstrating that the LNP surcharges are not just and reasonable or that the assessment of such is not financially viable.

The panel recognized that rural customers are entitled to the same level of services and choices that are available in all parts of Tennessee and the nation and that the LNP mandate is but one step in ensuring that advanced services are available. The panel also recognized that rural companies are and should be afforded certain protections, as evidenced by Section 251(f)(2) of the Act, however, they should carry the burden of proof required by law in order to afford themselves that protection. The panel determined that the Coalition failed to meet the burden of proof established by the Act and voted unanimously to deny the Coalition's *Amended Petition*.


In denying the Coalition's *Amended Petition*, the panel acknowledged that LNP capability is dependent to some extent on third-party vendors over which the members of the Coalition have no control. Also, there is the need for additional time to prepare back office systems for LNP implementation. For these reasons, the panel voted to establish specific deadlines for implementation of LNP by the members of the Coalition. The panel voted to permit DeKalb Telephone Cooperative until January 15, 2005 to implement intermodal LNP and ordered that Ardmore Telephone Company, Inc.; Ben Lomand Rural Cooperative, Inc.; Bledsoe Telephone Cooperative; Crockett Telephone Company, Inc.; Highland Telephone Cooperative, Inc.; Humphreys County Telephone Company; Loretto Telephone Company, Inc.; Millington Telephone Company; North Central Telephone Cooperative, Inc.; Peoples Telephone Company; Teleco Telephone Company, Inc.; Tennessee Telephone Company; Twin Lakes Telephone Cooperative Corporation; West Tennessee Telephone Company, Inc.; and Yorkville Telephone Cooperative have until November 20, 2004 to implement intermodal LNP.


These dates represented 60 days from the date by which these companies stated that they would have received or activated LNP software. The panel permitted any party to request an extension of these implementation dates upon a showing that events beyond their control delayed implementation. In addition, the panel determined that any member of the Coalition experiencing a problem meeting the deadline should notify the TRA at least thirty (30) days prior to the November 20, 2004 deadline. The panel required that DeKalb Telephone Cooperative ("DeKalb") provide a report on the status of its implementation plan. In the event the vendor can provide the necessary equipment sooner, then DeKalb should provide this information to the TRA and proceed to implement LNP for its new or old customers.

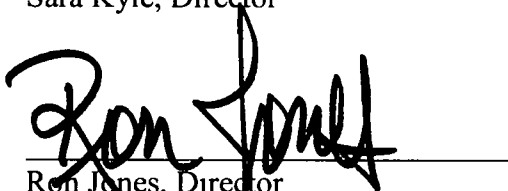
**IT IS THEREFORE ORDERED THAT:**

1. The *Amended Petition for Suspension* of the Tennessee Coalition of Rural Incumbent Telephone Companies is denied.
2. The DeKalb Telephone Cooperative shall have until January 15, 2005 to implement intermodal LNP and shall provide to the TRA a report on the status of its implementation plan. DeKalb Telephone Cooperative should proceed to implement LNP sooner than January 15, 2005 if the necessary equipment is provided sooner than indicated.
3. Ardmore Telephone Company, Inc.; Ben Lomand Rural Cooperative, Inc.; Bledsoe Telephone Cooperative; Crockett Telephone Company, Inc.; Highland Telephone Cooperative, Inc.; Humphreys County Telephone Company; Loretto Telephone Company, Inc.; Millington Telephone Company; North Central Telephone Cooperative, Inc.; Peoples Telephone Company; Teleco Telephone Company, Inc.; Tennessee Telephone Company; Twin Lakes Telephone Cooperative Corporation; West Tennessee Telephone Company, Inc.; and Yorkville Telephone Cooperative shall have until November 20, 2004 to implement intermodal LNP.

4. Any member of the Coalition that experiences a problem in meeting the deadline set forth in this Order should notify the TRA, in writing, at least thirty (30) days prior to the expiration of the deadline.

  
Deborah Taylor Tate, Director

  
Sara Kyle, Director

  
Ron Jones, Director